

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LUMEN VIEW TECHNOLOGY LLC,

Plaintiff,

v.

FINDTHEBEST.COM, INC.,

Defendant.

No. 13 CV 3599

ECF CASE

JURY TRIAL DEMANDED

DEFENDANT FINDTHEBEST.COM'S ANSWER TO COMPLAINT

Defendant FindTheBest.com, Inc. ("FTB" or "Defendant"), by and through its undersigned attorneys, hereby responds to the Complaint of plaintiff Lumen View Technology LLC ("Lumen" or "Plaintiff") and asserts its affirmative defenses thereto as follows:

PARTIES

1. FTB admits that Lumen has asserted that it is a limited liability company organized and existing under the laws of Delaware.

2. FTB admits that it is a Delaware corporation having a principal place of business at 101 Innovation Place, #A, Santa Barbara, California 93108. Except as so admitted, FTB denies each and every remaining allegation contained in paragraph 2 of the Complaint.

NATURE OF THE ACTION

3. FTB admits that the Complaint purports to allege a civil action for patent infringement arising under the patent laws of the United States, and more specifically, under Title 35, United States Code § 1 *et seq.*

JURISDICTION AND VENUE

4. FTB admits that this Court has subject matter jurisdiction over actions arising under 28 U.S.C. §§ 1331 and 1338(a). Except as so admitted, FTB denies each and every remaining allegation contained in paragraph 4 of the Complaint.

5. FTB admits that it was registered with New York State's Department of State, Division of Corporations. Except as so admitted, FTB denies each and every remaining allegation contained in paragraph 5 of the Complaint.

6. FTB admits that it conducts business in the United States. Except as so admitted, FTB denies each and every remaining allegation contained in paragraph 6 of the Complaint.

7. FTB admits that venue is proper in the Southern District of New York. Except as so admitted, FTB denies each and every remaining allegation contained in paragraph 7 of the Complaint.

THE PATENT-IN SUIT

8. FTB incorporates by reference its responses to paragraphs 1 through 7 as though fully set forth herein.

9. FTB admits that U.S. Patent No. 8,069,073 (the "'073 Patent") is titled "System and Method for Facilitating Bilateral and Multilateral Decision-Making" and bears and issuance date of November 29, 2011. FTB further admits that what purports to be a copy '073 Patent was attached to Lumen's Complaint as Exhibit A. FTB is without knowledge or information

sufficient to form a belief as to the truth of any of the remaining allegations of paragraph 9, and therefore denies them on that basis.

10. FTB is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10, and therefore denies them on that basis.

COUNT I – PATENT INFRINGEMENT

11. FTB incorporates by reference its responses to paragraphs 1 through 10 as though fully set forth herein.

12. FTB denies the allegations of paragraph 12 of the Complaint.

13. FTB denies the allegations of paragraph 13 of the Complaint.

14. FTB denies the allegations of paragraph 14 of the Complaint.

15. FTB denies the allegations of paragraph 15 of the Complaint.

16. FTB denies the allegations of paragraph 16 of the Complaint.

17. FTB denies the allegations of paragraph 17 of the Complaint.

PRAYER FOR RELIEF

18. FTB denies that Lumen is entitled to judgment or to any of the relief requested in paragraphs “A” through “E” of the prayer for relief in the Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense

19. The Complaint fails to state a claim upon which relief may be granted.

Second Affirmative Defense

20. The ‘073 Patent is invalid for failing to comply with one or more provisions of Title 35 of the United States Code, including without limitation, 35 U.S.C. §§ 101-103, 112 and 116.

Third Affirmative Defense

21. FTB has not infringed and does not infringe, either directly or indirectly, any of the claims of the '073 Patent, either literally or under the doctrine of equivalents.

Fourth Affirmative Defense

22. Lumen is estopped, by virtue of cancellations, amendments, representations, and concessions made to the United States Patent and Trademark Office (the "USPTO") during the prosecution of the '073 Patent or the prosecution of any applications for patents from which it claims priority, from construing any claims of the '073 Patent to have been infringed by FTB.

Fifth Affirmative Defense

23. To the extent that Lumen does not own all the rights to the '073 Patent, the Complaint must be dismissed for lack of standing.

Sixth Affirmative Defense

24. Lumen's claims for relief are barred by the doctrines of acquiescence, estoppel, laches, waiver, prosecution laches and/or other applicable equitable doctrines.

Seventh Affirmative Defense

25. Lumen's claims for relief are barred due to the doctrine of unclean hands.

Eighth Affirmative Defense

26. Lumen's claim for damages, if any, against FTB for alleged infringement of the '073 Patent is limited by 35 U.S.C. §§ 286, 287 and 288.

Ninth Affirmative Defense

27. FTB has an implied or express license to the '073 Patent.

PRAYER FOR RELIEF ON LUMEN'S COMPLAINT

WHEREFORE, FTB prays for judgment against Lumen on Lumen's Complaint, as follows:

- a. That Lumen take nothing by way of the Complaint;
- b. That Lumen's Complaint be dismissed with prejudice;
- c. That the Court enter judgment against Lumen and in favor of FTB in all respects;
- d. For a determination in FTB's favor that this is an exceptional case under 35 U.S.C. § 285, and an award of attorney's fees and costs to FTB in this action;
- e. An award to FTB of its costs of suit; and
- f. For such other and further relief as the Court deems just and equitable.

Dated: July 8, 2013

Respectfully submitted,

By: /s/ Joseph S. Leventhal

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